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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1925.

No. [redacted] 199

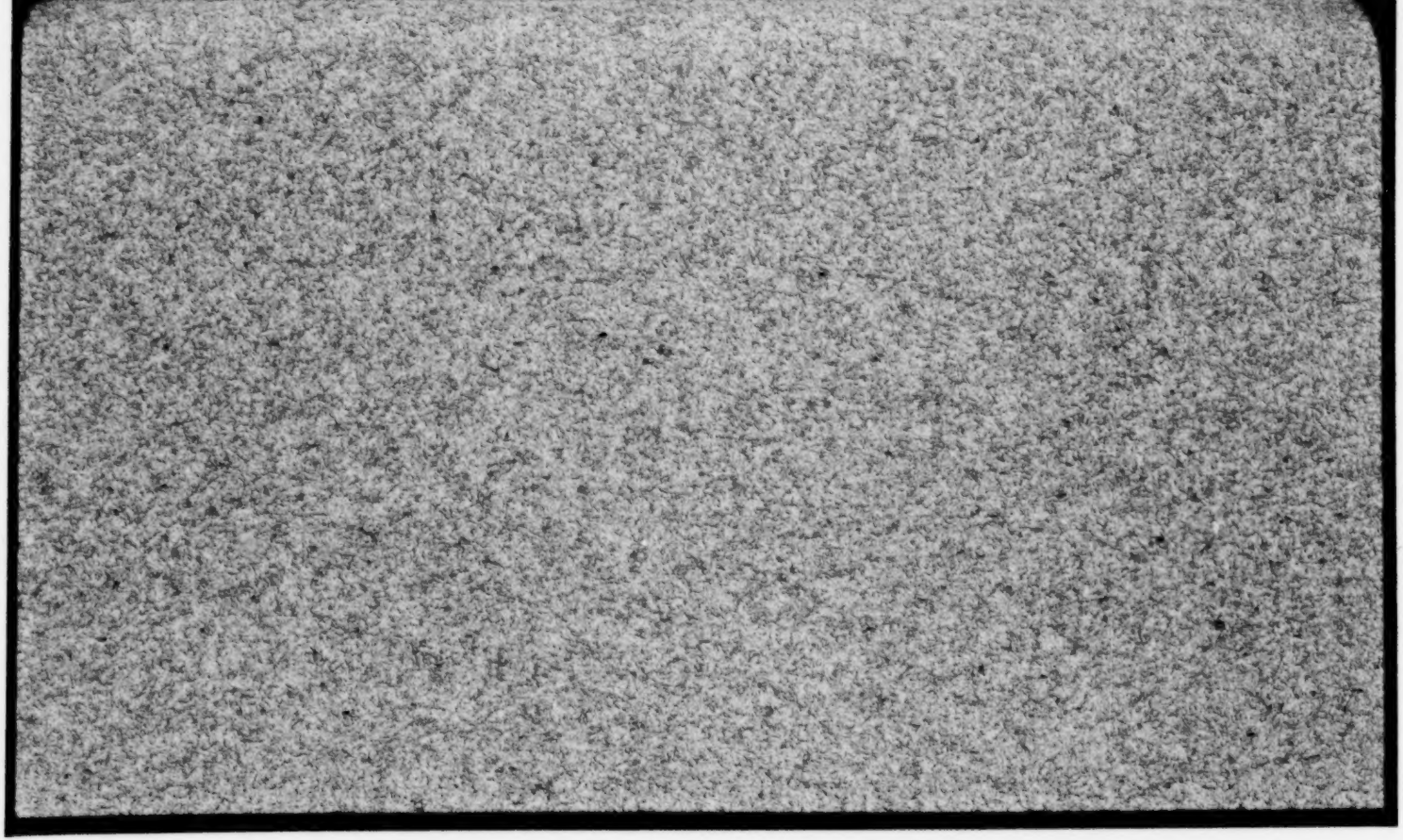
WILLIAM A. RHEA, PETITIONER,

vs.

THOMAS C. SMITH.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

THOMAS HACKNEY,
Counsel for Petitioner.



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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1925.

No. 686.

WILLIAM A. RHEA, PETITIONER,

vs.

THOMAS C. SMITH, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSOURI.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, William A. Rhea, respectfully petitions this honorable court to grant its writ of certiorari to the Supreme Court of the State of Missouri and to remove therefrom to this court for review the record in the case, there lately pending, entitled William A. Rhea, appellant, *vs.* Thomas C. Smith, respondent, being No. 24056 on the docket of that court, the petitioner herein being the appellant

therein. The judgment of the Missouri Supreme Court became final on the overruling of the appellant's motion for rehearing on May 23, 1925 (R., 28). A duly certified copy of the entire record of said cause is herewith presented.

Question Presented.

The sole question involved in this case in the State court, as well as on this petition for certiorari, is this: Under the Act of Congress of August 1, 1888, chapter 729, section 1 (25 Stat. at Large, 357), relating to the lien of judgments of Federal district courts, is a judgment rendered on January 10, 1921, by the United States District Court at Joplin, in Jasper County, Missouri, a lien on real estate of the judgment debtor in said county from the day of its rendition, the same as if such judgment had been rendered in the State circuit court of said county? Or does the Missouri statute (sec. 1554, R. S. Mo., 1919) permitting the filing of transcripts of the judgments of Federal district courts in the office of the clerk of the State circuit court and providing that any such judgment shall become a lien from the *time of so filing such transcript* (but making no such limitation on the liens of judgments of the State circuit court of that county) deprive the Federal judgment of any lien whatever unless and until such transcript is so filed?

The petitioner here claims title to the real estate in controversy, asserting that such Federal judgment was a lien on such real estate from the date of its rendition, while the respondent contended below that such judgment was not a lien, no transcript thereof having been so filed. If such judgment was a lien, then the petitioner's title is conceded to be

superior. Otherwise the respondent has the superior title to the land in controversy.

The Supreme Court of Missouri, by majority opinion (R., 34), reported in Rhea *vs.* Smith, 272 Southwestern Reporter, 964-967, held that the judgment was not a lien and that the purchase by the respondent from the judgment debtor after the rendition of the judgment was superior to the title acquired by petitioner by execution sales thereafter had under said judgment. In a dissenting opinion (R., 41) (272 Southwestern, 967-970) Judges Blair and Atwood held that the Federal judgment, the same as a judgment of the State circuit court of that county, was a lien on the land in controversy in that county from the date of its rendition, without the filing of a transcript, and accordingly held that the petitioner had the superior title. The petitioner, as will thus be seen, claims title to the land in controversy by virtue of a statute of the United States.

Statement of Facts.

The facts are not in dispute and are briefly stated in the majority opinion of the Supreme Court of Missouri (R., 34) thus:

> "Suit in two counts. The first to determine title to certain real estate in Jasper county, and the second in ejectment to recover possession of such real estate. There was judgment for the defendant in the trial court, and plaintiff appealed.
>
> "The facts are undisputed. One Blanche H. Whitlock was the common source of title, and January 10, 1921, owned the property in dispute. On that day a judgment in a certain cause, in which she was plaintiff, pending in the United States District Court for

the Southern Division of the Western District of Missouri, at Joplin, was dismissed, and the cost of the case adjudged against her in the sum of $8,890.20. No transcript of this judgment was ever filed in the office of the clerk of the circuit court of Jasper County.

"On April 5, 1921, Blanche Whitlock conveyed the property in dispute to the defendant, Thomas C. Smith, for a consideration of $5,000, of which $2,800 was paid in cash, the purchaser assuming a mortgage on the premises for the balance. On July 22, 1921, execution was issued upon the judgment, and, by virtue of that execution, the United States marshal sold for $200 to the plaintiff Rhea, a portion of the property in dispute, and by marshal's deed conveyed it to him.

"On December —, 1921, another execution was issued on the judgment, under which the marshal sold the remainder of the land in dispute. It was purchased by the plaintiff for $25, and conveyance made to him.

"It is claimed by appellant that the judgment of the federal court was a lien on the real estate from its rendition; that he acquired title through the execution sales, and therefore his title was superior to any title acquired by subsequent conveyance of the judgment debtor. Respondent claims that in the absence of a transcript of the same, filed in the office of the clerk of the circuit court of that county, the judgment of the federal court was not a lien, and that the conveyance to respondent, prior to the execution sales, passed good title."

Reasons for the Allowance of the Writ.

1. The question presented by this petition, viz., whether or not the Congress has so legislated with reference to liens

of judgments of the United States district courts that the States may by legislation limit and postpone the liens of judgments of such courts without placing a similar limitation on the liens of judgments of the State courts of general jurisdiction, is of grave importance in every part of this Union.

2. If the decision of the Missouri Supreme Court in question is permitted to stand, it will materially affect and greatly subvert the judicial power of the Union. It will place suitors in the State courts in a much better position than in the Federal courts.

3. The Missouri Supreme Court has in its opinion in question decided a Federal question of substance and great importance not heretofore directly determined by this court, and the decision is not in harmony with the trend of decisions of this court rendered previous to the passage of the Act of Congress of August 1, 1888, relating to the liens of judgments of Federal district courts.

4. A decision by this court of the important question involved is necessary for the security of real-estate titles throughout the Union.

5. The said Supreme Court of Missouri is the highest court of said State in which a decision of the question involved could be had.

BRIEF IN SUPPORT OF PETITION.

I.

This Court Has Jurisdiction.

Petitioner claims title to the real estate in controversy, basing his right upon the Act of Congress of August 1, 1888, section 1, chapter 729, relating to liens of judgments of Federal district courts. This right was denied him by the State Supreme Court. Therefore this court has undoubted jurisdiction on certiorari.

Section 237 (*b*) of the Judicial Code as amended by the Act of February 13, 1925.

Talbot *vs.* First National Bank of Sioux City, 185 U. S., 172.

II.

Judgments of Federal District Courts in Missouri Have Same Liens in Counties Where Rendered as Judgments of State Circuit Courts.

Under the Missouri statutes (sections 1555, 1556, Revised Statutes of Missouri, 1919) judgments in Missouri State circuit courts (they being the courts of general jurisdiction in said State) are made liens on real estate of the debtor situate in the county where the judgments are rendered. This lien takes effect from the date of rendition of the judgment without any requirement for registering, recording, docketing, indexing, or anything to be done in a particular manner or place. Therefore, under section 1 of the Act of Congress of

August 1, 1888, chapter 729, similar liens under similar conditions must be accorded to Federal district court judgments.

Sections 1555 and 1556 of the Revised Statutes of Missouri, 1919, are as follows:

> "SEC. 1555. Lien in Courts of Record Generally.—Judgments and decrees rendered by any court of record shall be a lien on the real estate of the person against whom they are rendered, situate in the county for which the court is held.
>
> "SEC. 1556. The Commencement, Extent, and Duration of Lien.—The lien of a judgment or decree shall extend as well to the real estate acquired after the rendition thereof as to that which was owned when the judgment or decree was rendered. Such liens shall commence on the day of the rendition of the judgment, and shall continue for three years, subject to be revived as hereinafter provided; but when two or more judgments or decrees are rendered at the same term, as between the parties entitled to such judgments or decrees, the lien shall commence on the last day of the term at which they are rendered."

The section 1, chapter 729, of Act of Congress is as follows:

> "SEC. 1. Judgments and decrees rendered in a (circuit or) district court of the United States within any state, shall be liens on property throughout such state in the same manner and to the same extent and under the same conditions only as if such judgments and decrees had been rendered by a court of general jurisdiction of such state; *provided*, that whenever the laws of any state require a judgment or decree of a state court to be registered, recorded, docketed, indexed, or any other thing to be done, in a particular manner, or in a certain office or county, or parish in

> the state of Louisiana before a lien shall attach, this act shall be applicable therein whenever and only whenever the laws of such state shall authorize the judgments and decrees of the United States courts to be registered, recorded, docketed, indexed, or otherwise conformed to the rules and requirements relating to the judgments and decrees of the courts of the state."

It will be noted from a reading of the two sections of the Missouri statute above quoted that the laws of that State do not "require a judgment or decree of a State court to be registered, recorded, docketed, indexed, or any other thing to be done in a particular manner or in a certain office or county before a lien shall attach." Therefore the proviso in section 1 of the Act of Congress in question does not and never did apply to judgments rendered either in the State or Federal courts of Missouri. That part of section 1 preceding the proviso is the only part applicable in Missouri.

Under the mandatory provisions of section 1 of this act, Federal district court judgments "shall be liens on property throughout such State in the *same manner* and to the *same extent* and *under the same conditions only* as if such judgments had been rendered by a court of general jurisdiction of such State."

If, therefore, the Act of Congress is supreme and of itself invests in the Federal court judgments the same lien as is accorded to State circuit court judgments by the Missouri statute, then it follows that the judgment in question must be held a lien on the real estate in controversy.

The majority opinion of the Supreme Court of Missouri holds in effect that section 1 of the Act of Congress in ques-

tion is modified by section 1554, Revised Statutes of Missouri, 1919, reading as follows:

> "SEC. 1554. Lien of Judgment in Supreme Court, Courts of Appeals, and Federal Courts in this State.—Judgments and decrees obtained in the supreme court, in any United States district or circuit court held within this state, in the Kansas City court of appeals or the St. Louis court of appeals, shall, upon the filing of a transcript thereof in the office of the clerk of any circuit court, be a lien on the real estate of the person against whom such judgment or decree is rendered, situate in the county in which such transcript is filed."

It will be noted that by this section the provisions for filing transcripts of Federal district court judgments appear in the same section providing for such transcripts of judgments of the Supreme Court and courts of appeal of that State. It is not contended by anyone that the State courts named in this section are courts of general jurisdiction. It is agreed on all hands that their jurisdiction is appellate and limited.

The conditions under which liens are by this statute accorded to judgments of these State appellate courts are not the standard specified in the Act of Congress by which to determine the commencement, etc., of liens of judgments of the Federal district courts.

It is submitted that this section of the Missouri statute can have no application and does not have the effect of depriving the Federal judgment of its lien, in the county where rendered, by attaching a condition subsequent to the effect, that after the rendition of the judgment a transcript thereof must be filed in the office of the clerk of the State circuit court.

This would be in direct conflict with section 1 of the Act of Congress in question.

The argument of the majority opinion that it would take but a short time to transcribe a judgment of the Federal court and file it with the clerk of the State court on the day of its rendition and thus put it on par with the judgment of the State court rendered on the same day is, we submit, wholly unsound. If the State statute in question can thus annex a limitation to the taking effect of the lien of a Federal court judgment by requiring the performance of some act subsequent to its rendition not required of judgments of the State circuit court, then the State statute and not the Federal statute is supreme.

III.

The majority opinion places much stress on the fact that as originally enacted the Act of August 1, 1888, contained three sections, and that the amendments from time to time of section 3 and the ultimate repeal of that section have an important bearing on the construction of section 1.

Section 1 of the act has never been amended. Section 2 of the act has likewise remained in its original form untouched by any amendment. It reads as follows:

> "SEC. 2. The clerks of the several courts of the United States shall prepare and keep in their respective offices complete and convenient indices and cross-indices of the judgment records of said courts, and such indices and records shall at all times be open to the inspection and examination of the public."

Section 3 of the act as originally enacted was as follows:

> "SEC. 3. Nothing herein shall be construed to require the docketing of a judgment or decree of a

> United States court, or the filing of a transcript thereof, in any State office within the same county or parish in the State of Louisiana in which the judgment or decree is rendered, in order that such judgment or decree may be a lien on any property within such county."

It was amended by Act of March 2, 1895, c. 180, 28 Stat., 814, by some verbal changes and by adding at the end thereof the further clause:

> "If the clerk of the United States court be required by law to have a permanent office and a judgment record open at all times for public inspection in such county or parish."

> Said section 3 was repealed by Act of Aug. 17, 1912, c. 300, 37 Stat. 311, and the amendatory act, Act of March 2, 1895, c. 180, was repealed by Act of Aug. 23, 1916, c. 229, Sec. 1, 39 Stat. Section 2 of said Act of Aug. 23, 1916, c. 229, 39 Stat., provided that the act was to take effect January 1, 1917.

As originally enacted, section 3 was in conflict with section 1 of the act in those States where judgments of the State courts of general jurisdiction were not liens until they had been recorded or enrolled or docketed at some particular place. The Federal judgment took effect in such case prior to the taking effect of the State court judgment, which was a discrimination in favor of the Federal court judgment. The subsequent amendment and final repeal of section 3 left section 1 of the act in full force and had the effect of putting the Federal and State court judgments on a footing of absolute equality as to time and manner of origin, etc., of liens.

IV.

The majority and minority opinions of the Supreme Court of Missouri (Rhea *vs.* Smith, 272 S. W., 964) fully cover the contentions of the contending parties, and we respectfully refer this court to these opinions. We beg to submit that the reasoning given in the dissenting opinion by Judges Blair and Atwood is sound and in harmony with the underlying principles involved, and that this dissenting opinion should, in substance, be adopted as the opinion of this court.

It is respectfully submitted, therefore, that a writ of certiorari should be issued as prayed.

THOMAS HACKNEY,
Attorney for Petitioner.

KANSAS CITY, MISSOURI,
August, 1925.